

The Principles of Qualifying Farmland for VAD

Welcome!

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Agenda Items & Questions

- How to enroll and unenroll VAD members?
- What is a conservation agreement?
- How to certify a conservation agreement?

Keys for successful in enrolling and unenrolling VAD Members

- Essentials
 - A current certified and sanctioned county VAD ordinance
 - A clear application and approval process
 - A simple unenrolling strategy, application and approval process
- Primary and Secondary VAD membership points of contact
- VAD Member Education and Awareness Program

How to enroll and unenroll VAD members

- All guidance and policy is based upon the sanctioned county ordinance for the VAD
 - Easy and practical membership application which defines requirements for VAD membership
 - Set timetable and process after application for approvals and denials
 - Need to have an appeal process for applicants not approved
- Clear and precise details of benefits as a member and requirements to maintain membership

State Statute Requirements

To secure county certification as qualifying farmland in a Voluntary Agricultural District, a farm must:

1. Be real property that is **engaged in agriculture** as that word is defined in N.C.G.S. § 106-581.1;
2. Be managed, if **highly erodible land** exists on the farm, in accordance with the Natural Resources Conservation Service defined erosion-control practices that are addressed to said highly-erodible land;
3. Be the subject of a **Conservation Agreement**, as defined in N.C.G.S. § 121-35, between the county and the owner of such land that prohibits non-farm use or development of such land for a period of at least ten (10) years, except for the creation of not more than three lots that meet applicable county zoning and subdivision regulations; and
4. Be located in the unincorporated area of _____ County, unless there is an agreement with a municipality through which the county is authorized to exercise the authority of the municipality on its behalf.

Agriculture

§ 106-581.1. Agriculture defined.

For purposes of this Article, the terms "agriculture", "agricultural", and "farming" refer to all of the following:

- (1) The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.
- (2) The planting and production of trees and timber.
- (3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing.
- (4) Aquaculture as defined in G.S. 106-758.
- (5) The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.
- (6) When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on a farm, and similar activities incident to the operation of a farm.
- (7) A public or private grain warehouse or warehouse operation where grain is held 10 days or longer and includes, but is not limited to, all buildings, elevators, equipment, and warehouses consisting of one or more warehouse sections and considered a single delivery point with the capability to receive, load out, weigh, dry, and store grain. (1991, c. 81, s. 1; 2005-390, s. 18; 2006-255, s. 6; 2013-347, s. 2; 2017-108, s. 8.1.)

What is Management of Highly Erodible Land?

- USDA NRCS Definition:
 - HEL is land that can erode at an excessive rate from either water or wind because of soil properties, leading to long-term decreased productivity. HEL is designated by field and based on the proportion of the total acreage that contains highly erodible soils.
- HEL fields are fields where either:
 - 33.3 percent or more of the total field acreage has HEL soils, or
 - 50 acres or more of the field has HEL soils

What is a HEL Conservation Plan?

- A land management plan designed to provide certainty that the approved conservation measures will meet HEL conservation requirements.
- The plan provides scheduled and document guidance on land manage decisions on wind, water, and ephemeral gully erosion control measures to ensure:
 - a 75 percent reduction of the potential erosion; OR
 - less than two times the tolerable soil loss (T) for the predominant HEL soil.
 - And that ephemeral gully erosion is controlled.

What Should Be Included In The VAD Application To Certify HEL Compliance?

- Certify with a signature
- County can require a plan (if there is one)
 - Likely a plan if land has ever served as farm loan collateral
- "I hereby certify that (parcel) is ____ is not ____
Considered highly erodible land (HEL) by the Soil Conservation Service (e.g. Natural Resources Conservation Service or NC Soil & Water Conservation District). If the parcel is designated HEL, a management plan approved by the Soil Conservation Service is attached."

The Conservation Agreement (N.C.G.S. § 121-35)

- A "conservation agreement" means a right, whether or not stated in the form of a restriction, reservation, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land or improvement thereon or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use, to forbid or limit any or all (i) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground, (ii) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (iii) removal or destruction of trees, shrubs or other vegetation, (iv) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, (v) surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition, (vi) activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or (vii) other acts or uses detrimental to such retention of land or water areas.

County Approaches

- Stand-alone agreement (recorded)
 - Was practice in Orange County
 - No statutory recording requirement (EVAD required)
- Stand-alone agreement (filed away)
- Language on the application
 - In the form of certification by signature on the application
 - Transylvania Co Example

If none of the above, then legally no qualified acreage in your VAD

Simple Application

N.C. Cooperative Extension
Transylvania County Center
Transylvania.ces.ncsu.edu
105 E. Morgan St. STE. 109
Brevard, NC
P: 828-864-3109
brenner@ncsu.edu



Dear Present Use Value Program Participant,

On behalf of North Carolina Cooperative Extension and Transylvania County Soil and Water Conservation District, we encourage you to consider Transylvania County's Present Use Value Program. This program, is completely voluntary and offers a variety of benefits for your farmland.

A Voluntary Ag District (VAD) is a parcel of land which the owner has agreed to use only as farmland for a period of 10 years. This program is completely voluntary and helps private property be secured against nuisance and other lawsuits.

The purpose of the Voluntary Ag District (VAD) program is to encourage the voluntary protection of farmland in recognition of the importance of agriculture to the economic and social well-being of the county. Transylvania County adopted a VAD Ordinance in 1996 and updated it in 2018. To date, 29 Transylvania County farms are enrolled in the VAD program. The VAD program is administered by the Agricultural Advisory Board, which is appointed by the Transylvania Board of Commissioners to 3-year terms.

What's in it for me?

The preservation of Transylvania County's farmland is very important. In addition to keeping our county economically viable, farmland helps preserve our rural heritage of this county. There are several additional benefits for landowners who sign up for the VAD program. These include:

- VAD farms have increased protection from nuisance lawsuits
- Public hearings are required on proposed condemnation of VAD farms
- VAD landowners are not required to connect to water and/or sewer systems
- VAD landowners are not required to be assessed water and/or sewer charges until connected to those services



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How do I qualify to be in a VAD?

To secure county certification as qualifying farmland in either a District or Enhanced District, a farm must:

Be real property that is engaged in agriculture as defined in N.C.G.S. § 106-581.1

Have, or be in the process of obtaining a NRCS soil conservation plan if the land is highly erodible defined by NRCS, and the property is not in Present Use Tax Valuation Program

Have a current NRCS Conservation plan on file prior to approval of an Enhanced Voluntary I designation

Be the subject of a Conservation Agreement, as defined in N.C.G.S. § 121-35, between the owner of such land that prohibits non-farm use or development of such land for a period least ten years, except for the creation of not more than three lots that meet applicable county and subdivision regulations

Interested in Applying?

Entering into a VAD is completely voluntary and can be revoked with written notice at the owner's will. The agreement entails that the owner keeps his/ her farmland in farm production for a 10 years.

An Enhanced VAD carries a NON-REVOCABLE 10-year agreement to keep a parcel as farmland. Additional benefits come from being in an Enhanced VAD, including higher rating considers NRCS cost share projects.

To apply, fill out the attached application and return/ mail to:

Cooperative Extension VAD Program
105 E. Morgan St.
Brevard NC 28712

Please feel free to call or email with any questions!

Sincerely,

Bart Renner
Cooperative Extension Director

Jeff Parker
Transylvania Soil and Water Conservation

Application for Participation in the Transylvania County Voluntary Agricultural District Program

INSTRUCTIONS: Before completing the application please review the Transylvania County Voluntary Agricultural District Ordinance, and then fill out the form as accurately and completely as possible.

APPLICANT/S Name/s: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Phone Number: (Home) _____ (Work or Cell) _____
Email: _____

In order to qualify for entry into a VAD, the land must meet the following requirements:

1. Be must be real property that is engaged in agriculture as defined in N.C.G.S. § 106-581.1;
2. If highly erodible land, as defined by NRCS, exists and the property is not in Present Use Tax Valuation Program, then the property must be in, or in the process of obtaining, a NRCS soil conservation plan.
3. Be the subject of a Conservation Agreement, as defined in N.C.G.S. § 121-35, between the county and the owner of such land that prohibits non-farm use or development of such land for a period of at least ten years, except for the creation of not more than three lots that meet applicable county zoning and subdivision regulations (see below).
4. Be in Transylvania County

Property Information (enter all qualifying parcels to be entering in VAD)

Name of Owner	Street Address	Parcel #	# of acres	USDA Farm #

OWNER(S) CERTIFICATION I (We), the applicant(s), hereby certify that, to the best of my (our) ability, the foregoing application is complete and accurate. We further understand that acceptance into the Voluntary Agriculture District is a binding agreement on self, all successors and assigns with Transylvania County. If certified by the Agricultural Advisory Board, I (we) agree to sustain, promote, and encourage responsible agriculture in the district, support protection against nuisance suits, and I (we) agree to prohibit non-farm use of the land under this program for a period of ten years from the date certified by the Agricultural Advisory Board. My (our) contract with the county will be reviewed at the end of the 10-year term. At that time I (we) will have 30 days to withdraw from the agreement, or the property will be automatically re-enrolled another 10 year term. I (We) understand I (We) can exit this agreement at any time with written notice.

Landowner(s) Signature(s): _____

Date: _____

Notary Public Acknowledgment

State: _____ County: _____ (Seal here)

I hereby certify that _____ (Name of applicant) appeared before me on this _____ day of _____, 20____, and signed this form in my presence.

Notary Public Signature

My Commission Expires (Date)

Approval Process

Ag Advisory Board Chairperson Approval Signature: _____

Printed Name: _____

Date of Board meeting/approval of application: _____

Cooperative Extension Representative Signature: _____

Printed Name: _____ Date: _____

Transylvania County Soil and Water Signature: _____

Printed Name: _____ Date: _____

Transylvania County Tax Office Signature: _____

Printed Name: _____ Date: _____

Note: all the above offices must have signed before this can be put on file with the register of deeds (it is not required to file a regular VAD application with the register of deeds).

Transylvania Register of Deeds Signature: _____

Printed Name: _____ Date: _____



Sufficient Language(?)

OWNER(S) CERTIFICATION I (We), the applicant(s), hereby certify that, to the best of my (our) ability, the foregoing application is complete and accurate. We further understand that acceptance into the Voluntary Agriculture District is a binding agreement on self, all successors and assigns with Transylvania County . If certified by the Agricultural Advisory Board, I (we) agree to sustain, promote, and encourage responsible agriculture in the district, support protection against nuisance suits, and I (we) agree to prohibit non-farm use of the land under this program for a period of ten years from the date certified by the Agricultural Advisory Board. My (our) contract with the county will be reviewed at the end of the 10-year term. At that time I (we) will have 30 days to withdraw from the agreement, or the property will be automatically re-enrolled another 10 year term. I (We) understand I (We) can exit this agreement at any time with written notice.

Landowner(s) Signature(s): _____

Date: _____

Notary Public Acknowledgment

State: _____ County: _____ (Seal here)

I hereby certify that _____ (Name of applicant) appeared before me on this _____ day of _____, 20____, and signed this form in my presence.

Notary Public Signature

My Commission Expires (Date)

I think... “Certification and Agreement”

We the landowner(s) hereby certify that the information in this application is correct to the best of our knowledge and the public record. And that we have agreed by our signature below that we will retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use, and agree to refrain from any or all of the following: (i) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground, (ii) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (iii) removal or destruction of trees, shrubs or other vegetation, (iv) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, (v) surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition, (vi) activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or (vii) other acts or uses detrimental to such retention of land or water areas.

We further certify that (parcel) is ____ is not ____ considered highly erodible land (HEL) by the Soil Conservation Service (e.g. Natural Resources Conservation Service or NC Soil & Water Conservation District). If the parcel is designated HEL, a management plan approved by the Soil Conservation Service is attached.”

This agreement will terminate ten (10) years from the date of signature below. Unless terminated in writing prior to end of 10 year term, this agreement shall automatically renew for a period of three (3) years. Landowner may terminate at any time with written notice.

EVAD Conservation Agreements

- Ten Years
 - Subject to 3 year extension (see below)
- Irrevocable
 - Except by approval by the Council of State (heads of agencies)
 - And only if modification improves conservation values
 - Renews automatically for 3 years unless VAD Board is notified prior to expiration of 10 year term (see **§ 106-743.2.**)

Has not been tested in court (to my knowledge)



Questions?

